

# HOUSE BILL No. 1304

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-13-3-3.

**Synopsis:** Unlawful drainage liability. Imposes liability on a governmental entity or on an employee of a governmental entity for a loss resulting from gross negligence, willful or wanton misconduct, or intentional misconduct in failing to provide adequate drainage from industrial or commercial sites.

**Effective:** July 1, 2002.

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**Ruppel**

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January 15, 2002, read first time and referred to Committee on Environmental Affairs.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## HOUSE BILL No. 1304

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 34-13-3-3, AS AMENDED BY P.L.250-2001,  
2       SECTION 6, AND AS AMENDED BY P.L.280-2001, SECTION 42,  
3       IS AMENDED AND CORRECTED TO READ AS FOLLOWS  
4       [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a) Except as provided in**  
5       **subsection (b)**, a governmental entity or an employee acting within the  
6       scope of the employee's employment is not liable if a loss results from  
7       *the following:*

- 8       (1) The natural condition of unimproved property.  
9       (2) The condition of a reservoir, dam, canal, conduit, drain, or  
10      similar structure when used by a person for a purpose that is not  
11      foreseeable.  
12      (3) The temporary condition of a public thoroughfare *or extreme*  
13      *sport area* that results from weather.  
14      (4) The condition of an unpaved road, trail, or footpath, the  
15      purpose of which is to provide access to a recreation or scenic  
16      area.  
17      (5) *The design, construction, control, operation, or normal*

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condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

- (A) a set of rules governing the use of the extreme sport area;
- (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
- (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

~~(6)~~ (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

~~(7)~~ (8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

~~(8)~~ (9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

~~(9)~~ (10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

~~(10)~~ (11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

~~(11)~~ (12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

~~(12)~~ (13) Entry upon any property where the entry is expressly or impliedly authorized by law.

~~(13)~~ (14) Misrepresentation if unintentional.

~~(14)~~ (15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

~~(15)~~ (16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

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~~(16)~~ (17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, or a community corrections program under IC 11-12.

~~(17)~~ (18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

~~(18)~~ (19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

~~(19)~~ (20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b). *or*

~~(20)~~ (21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, *this* subdivision ~~(20)~~ expires ~~on~~ June 30, 2003; *or*

~~(21)~~ (22) *an act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been*

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1       *valid.*

2       **(b) A governmental entity or an employee of a governmental**  
3 **entity acting within the scope of the employee's employment is**  
4 **liable for a loss resulting from the gross negligence, willful or**  
5 **wanton misconduct, or intentional misconduct of a governmental**  
6 **entity or an employee of a governmental entity that results in a**  
7 **failure to provide adequate drainage for liquids that run off or are**  
8 **discharged:**

9       **(1) from real property that is:**

10       **(A) located within the boundaries of the governmental**  
11 **entity;**

12       **(B) owned by a person other than the person incurring the**  
13 **loss; and**

14       **(C) used for an industrial or a commercial purpose; and**

15       **(2) onto the surface of a road, a street, an alley, or another**  
16 **public way.**

17       **SECTION 2. [EFFECTIVE JULY 1, 2002] IC 34-13-3-3, as**  
18 **amended by this act, applies to causes of action arising after June**  
19 **30, 2002.**

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